

IN SENATE OF THE UNITED STATES,

MARCH 19, 1822.

MR. RUGGLES, from the Committee of Claims, to whom was referred the petition of John S. Larrabee, Moses Sheldon, and John Morton, sureties for Walter Sheldon, district paymaster in the state of Vermont,

REPORTED:

That Walter Sheldon was originally appointed paymaster of a regiment, in which capacity he continued and was paid for his services, until the 11th Aug. 1813. On the 12th day of August, in the same year, he accepted the appointment of district paymaster, and the petitioners became his sureties, in the sum of ten thousand dollars, for the faithful discharge of his duties in that office. The said Sheldon continued district paymaster during the late war with Great Britain, and afterwards until his death; during which time he was intrusted with large sums of money for disbursement, and performed arduous and laborious services in paying over the same to the troops. On the final settlement of his accounts at the Treasury Department, he was found indebted in a considerable sum to the government, and his own property has been found insufficient to pay the amount. The sureties state that the said district paymaster was an honest and correct man, and that the duties of his office were discharged with accuracy and faithfulness; that he performed unusual and extraordinary services, and that he ought to receive an extra compensation for the same. Under these circumstances, the sureties ask to be relieved against the penalty of the bond, and that they may be discharged from the balance which shall be found due the United States. To give a more full view of the case, the petition of the sureties, and the letter of the Third Auditor, is hereunto annexed.

The committee are of opinion that the correctness with which the paymaster performed his duties, and the extent of services rendered by him, as alleged by his sureties, form no grounds, and furnish no reasons, for the equitable interposition of Congress in their favor. The object of taking sureties is to provide against eventual loss by the principal. The committee discover no circumstances or facts in this case to distinguish it from others of a similar nature, where no relief has been granted. The following resolution is recommended for the consideration of the Senate:

Resolved, That the prayer of the petitioners ought not to be granted.

TREASURY DEPARTMENT,

Third Auditor's Office, 9th March, 1822.

SIR: In reply to the inquiry of the Hon. B. Ruggles, addressed to you, and referred to this office, with the petition and accompanying documents of the sureties of the late Walter Sheldon, a district paymaster in the service of the United States, "whether he performed extra services, not required by law, or the duties of his office, and, if so, to what extent?" I have the honor to state, that Mr. Sheldon was appointed originally the paymaster of a regiment, in which capacity he continued, and was paid for his services, until the 11th August, 1813. On the 12th August, 1813, he accepted the appointment of district paymaster; that, in the discharge of his duties in the latter capacity nothing is observable from his accounts and vouchers beyond the duties performed by other district paymasters. The instructions under which they acted made it their duty to pay the troops within their respective districts, and, when no regimental paymasters were attached to the troops within such district, nor any agents directed specially to pay them, it was always understood to be the duty of the district paymaster to make the payments, and they have uniformly done so, and for which no extra pay has been allowed.

The petition and papers are returned.

I have the honor to be, very respectfully,

Your most obedient servant,

PETER HAGNER, *Auditor.*

Hon. WM. H. CRAWFORD,

Secretary of the Treasury.

To the Honorable Senate and House of Representatives of the United States, in Congress assembled.

The petition of John S. Larrabee, of Shoreham, Moses Sheldon, and John Morton, both of Salisbury, county of Addison, and state of Vermont, humbly sheweth:

That, on the 21st day of August, A. D. 1813, one Walter Sheldon, then paymaster of the 11th regiment of infantry, U. S. army, was duly appointed a district paymaster in the army of the United States; and on that occasion your petitioners became bail and sureties for Walter Sheldon, in a bond, in the penal sum of ten thousand dollars, conditioned in the usual form, for the faithful discharge, by the said Sheldon, of the duties of said office of district paymaster. That the said Walter Sheldon continued in the said office of district paymaster, during the late war with Great Britain, and afterwards, until his death; and, in the course of his continuance in the said office, was intrusted, by the government of the United States, with large sums of money, for disbursements on account of the United

States, amounting, in the whole, to nearly one million and five hundred thousand dollars; and was charged with duties unusually arduous and laborious—and under such circumstances as involved an extraordinary degree of hazard and responsibility. That the said Sheldon discharged the duties of his office with an accuracy and faithfulness highly honorable to himself, and satisfactory to the head of department, to which he was attached, as is abundantly evident by the records of the war department. That after the conclusion of the late war, and at a time when his duties were rendered most difficult and laborious, by the payment of the troops of the war establishment, about to be disbanded, he was attacked with a consumption, induced by the severity of his labors, in the duties of his office, of which he lingered until the 16th day of June, A. D. 1816, when he died, being still in the public service; that, during a great part of his said sickness the said Sheldon was unable to attend to business of any kind, and left, at the time of his death, his whole account, as district paymaster, unsettled with the government, of which an account, amounting to the sum of five hundred and fifty-nine thousand seven hundred and ninety-one dollars and fifty-five cents was left to be stated and rendered by his administrators, they being furnished with the vouchers only. That the said administrators having adjusted the accounts according to such information as was to be derived from the papers left by said Sheldon, found a balance to be due thereon, to the United States, of seven thousand nine hundred and eighty-two dollars and eighty-nine cents—to which balance was afterwards added the further sum of seven hundred and seventy-nine dollars and fifty-two cents, being a difference created by sundry disallowances and suspensions made by the proper officers of the Treasury Department—making in all, a balance of eight thousand seven hundred and sixty-two dollars and forty-one cents, which was ultimately found due from the said Sheldon, to the United States, upon a final settlement of his accounts. Of this balance, the sum of three thousand nine hundred and twenty-two dollars and eighty-eight cents has been paid by the administrators of said Sheldon, leaving a balance now due, including interest, of five thousand one hundred and nine dollars and seventy cents. This balance having been put in suit is now in judgment against your petitioners, in the Circuit Court of the United States for the second circuit. To meet this sum now due, there is, in the hands of said administrators, a nominal balance of assets, over and above the payments already made, of three thousand seven hundred and two dollars and thirty-seven cents, which, being deducted from the above mentioned balance due to the United States, leaves an actual deficiency of one thousand four hundred and seven dollars and thirty-three cents, exclusive of the costs of suit. This deficiency will probably be increased by the failure of assets which will probably fall short, in the end, of the present nominal amount.

The deficiency in the assets of Mr. Sheldon, thus charged upon your petitioners, arose not from any default or mismanagement of the said Sheldon, but from the circumstances following. Mr. Sheldon, when appointed to the office of paymaster, was a young man, just ar-

rived at full age, wholly destitute of property, having never been engaged in any business on his own account. He was charged with duties unusually arduous, and under such circumstances as involved extraordinary responsibility and hazard; and, in the payment of so large a sum as that confided to him, it was to be expected that, with the greatest vigilance and accuracy, losses would occur. A great proportion of the moneys, which passed through his hands as district paymaster, were paid by him in detail, and, in many cases, through the deficiency of regimental and battalion paymasters, the responsibility of the ultimate payment was thrown upon him. At the same time, the compensation allowed him was not intended, nor was it adequate to the purpose of covering such losses as would accrue to the most accurate and careful agent. The loss ascertained to have been incurred by Mr. Sheldon, in the course of his duties, amount to about the sum of three hundred and fifty dollars, a loss extremely small in comparison with the amount actually disbursed by him.

Mr. Sheldon, as already stated, was taken sick, and died, in the course of his duties, and his whole account was left to be adjusted by administrators. The necessary expenses of administration, including the expense of settling the account with the government, and procuring vouchers to support charges suspended through the insufficiency of the vouchers left by Mr. Sheldon, exceeded one thousand dollars.

A considerable part of this expense arose from a claim in favor of the government against the estate of Mr. Sheldon, growing out of the fact that Mr. Sheldon became bail, after his appointment, for a subordinate paymaster, who was a defaulter to a large amount. This claim was, by the agents of the Treasury Department, put in suit against the administrators of Mr. Sheldon, and thus the effects, in their hands, were bound for the payment of the last mentioned claim.

At the instance of the bail of Mr. Sheldon, who considered that, if the assets should be applied, in the first instance, to the payment of this claim, they would be charged with the whole balance due from Mr. Sheldon, and thus rendered indirectly responsible for the default of one for whom they never became sureties, the claim was resisted.

And, although the suit was ultimately abandoned by direction of the Treasury Department, with a view of giving priority to the claim for which your petitioners were properly responsible, yet, before this result could be effected, a great expense had been incurred in defending it.

The expenses of Mr. Sheldon's last sickness are ascertained to amount to more than six hundred and fifty dollars. The items mentioned, to wit, the actual loss incurred by Mr. Sheldon in over payments, the expenses of his last sickness, and the necessary expenses of administering his effects, amount in all to more than two thousand dollars.

Your petitioners further represent, that the further sum of four hundred and twenty-six dollars and eighty-six cents was added to

the balance stated by the administrators to be due to the United States, being the balance of errors in the calculations and additions, in the payments made by Mr. Sheldon, over and above the amount of over payments above stated.

Although this sum was not actually lost to Mr. Sheldon, yet the error would naturally induce him to make other uses of the money, which would, if the error had been discovered, have been appropriated by him to the payment of the debt due the United States. And that a further actual loss was sustained by the estate of Mr. Sheldon, in the depreciation of property and the irresponsibility of debtors, to the amount of nine hundred and fifty-five dollars and forty-six cents.

Thus the expence of Mr. Sheldon's last sickness, with the charges of administration and the loss on property left by him, makes an aggregate loss of two thousand six hundred and fifty-five dollars. If to this we add the loss in over payments of three hundred and fifty dollars, an actual loss of more than three thousand dollars is shewn. If we keep in view that Mr. Sheldon entered upon his office without property, this result will not only account for the present deficiency, but will remove all suspicion that the public funds were either squandered or embezzled. This whole loss, with the exception of the small sums lost in over payments, may be considered as the consequence of his sickness and death. Up to that time he was abundantly able to satisfy the claim of the government. Indeed the expenses of his last sickness and of the administration of his effects, would of themselves cover the whole deficiency.

Your petitioners further represent that they are all in the decline of life, having large families, and utterly unable to pay the balance due to the United States in cash, without reducing themselves to a degree of distress falling little short of absolute want.

They, therefore, pray, that they may be discharged from the balance which shall be found due to the United States after the due application of the effects now in the hands of the administrators of said Sheldon, or that such other relief may granted them as is just and proper.

In preferring this prayer, your petitioners consider that though they may be holden to respond the balance due from Mr. Sheldon, by the force of positive contract, yet, that an equitable view of their responsibility will afford the strongest claims for relief. They virtually undertook for the integrity and faithfulness of a public agent; that he was honest and faithful your petitioners are fully prepared to shew. Had the defalcation arisen from any act, or even negligence of that agent, they would ask no relief; but extraordinary contingencies, inevitable accidents, and the dispensation of Providence, against which no human power or prudence can guard, were not in contemplation, and were not within the spirit of the undertaking. Up to the time of his unfortunate sickness and death, Mr. Sheldon was fully able to satisfy the claims of government; this event which led to the deficiency, was neither attributable to any default of him or his sureties, nor involved any breach of their contract.

It is worthy of consideration, whether the government, having secured the great object of integrity and faithfulness in a public agent, ought to require of that agent, to ensure them against such contingencies as are not within the control of foresight and prudence; and whether they ought not, in conformity with the general principles which regulate the relation of principal and agent, to assume upon themselves those losses which cannot be attributed to any neglect or default of their agent.

It is believed to be sound policy in a government to extend an equitable consideration to its agents, and not to enforce strict legal rights further than may consist with the dictates of justice and humanity. And it may well be doubted, whether affording relief in a case where all suspicion of fraud or mismanagement is removed, would establish a very dangerous precedent.

Your petitioners consider the case of Mr. Sheldon to be a peculiar one, on other grounds. In consequence of the deficiency of regimental paymasters, he was subjected to duties which came properly within their province, and thus additional labor and risk were incurred, as well as additional difficulty and expense in the administration on his estate, without any additional compensation—thus saving to the government the compensation of other officers, who, if they had been kept in service, would have taken from him a great portion of the responsibility incident to the payment of troops in detail. A comparison of the compensation allowed him, with that allowed other agents, or other paymasters, in proportion to the extent and responsibility of their duties, will show the propriety of making a distinction between him and others—a distinction which, from the nature of the case, could not be made beforehand.

Finally, a considerable portion of the deficiency was created by the course pursued by the government; by preferring the claim against Mr. Sheldon as surety for the subordinate paymaster, to that arising out of his own account, they were appropriating his effects in the first instance to the payment of the former, and leaving the latter to be paid by his sureties, thus rendering your petitioners ultimately responsible for the default, not of their principal, but of a stranger.

Though this course was finally abandoned, yet, in resisting this prosecution, a large bill of expense was incurred and charged upon the estate. If the considerations which induced the government to abandon this course were just, it certainly follows, that your petitioners should not be subjected to the expense of resisting a proceeding admitted to be improper.

Dated at Middlebury, this 3d day of December, A. D. 1821.

JOHN S. LARRABEE,
JOHN MORTON,
MOSES SHELDON.

The first part of the paper is devoted to a general
discussion of the problem. It is shown that the
problem is of great importance in the theory of
the differential equations of the second order.
The second part of the paper is devoted to a
detailed study of the problem. It is shown that
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101

